

REMARKS

Claims 1, 3, 7 and 19 are amended; claim 4 is withdrawn; and new claim 24 is added by this amendment. Dependent claims 2, 5, 6, 8-18 and 20-23 remain unchanged in text, as originally submitted, but are effectively amended by being dependent from amended claims. The following remarks concern the remaining claims 1-3 and 5-24.

Independent claim	Claims which depend directly or indirectly from the independent claim
1	2, 3, 5, 6 & 24
7	8-18
19	20-23

The Examiner has objected to claim 1 because of informalities related to the lack of antecedent support. Claim 1 has been amended to correct the stated informality and the objection should be overcome.

The Examiner has rejected claims 1, 2, 6-8, 13-15, and 17-20 under 35 U.S.C. §102(b) as anticipated by Ito et al 6,152,217. Applicants have amended claims 1, 7 and 19 to more particularly point out the invention.

The Examiner has rejected claim 16 under 35 U.S.C. §103(a) as being unpatentable over Ito et al alone.

The Examiner has rejected claims 3, 4, 9, 10, 21 and 22 under 35 U.S.C. §103(a) as being unpatentable over Ito et al in view of Kochaviet al 5,979,167. Claim 4 has been withdrawn and claim 3 has been amended to incorporate the limitations of original claim 4.

The Examiner has rejected claims 5, 11 and 23 16 under 35 U.S.C. §103(a) as being unpatentable over Ito et al in view of Kusakabe 4,959,974.

The Examiner has rejected claim 12 under 35 U.S.C. §103(a) as being unpatentable over Ito et al in view of Newman 4,936,103 (cited by Applicant).

The Ito et al patent clearly fails to provide evidence adequate to support the rejections under either the two statute sections cited by the Examiner.

The Examiner has alleged that the basis for all the rejections is that "Ito et al discloses a localized volume (the rear of the vehicle) which is cooled by a heat exchanger element 2 located adjacent to the volume and including a sensor 35 for detecting the temperature of the air flowing through the air duct."

However, the Examiner's conclusion is in error for several reasons, including the following:

1. Ito et al does not disclose or suggest a device, apparatus or method for cooling a defined localized volume of a vehicle, as claimed by Applicant.
2. Ito et al discloses an auxiliary type cooling device for the rear seating section of a vehicle passenger compartment, which is different from that claimed by Applicant.
3. Ito et al does not disclose or suggest that an air duct should or could be used to direct air flow both to and from a localized volume, as claimed by Applicant.
4. Ito et al does not disclose or suggest that one should or could provide a separate localized volume that can be cooled separate from the passenger compartment cooling system, as claimed by Applicant.
5. Ito et al does not disclose or suggest that one should or could define a localized volume, as claimed by Applicant.

Applicant has claimed both apparatus (claims 1, 2, 6-8, 13-15, 17-18) and method (claims 19 and 20) that are subject to the rejection under 35 USC

§102(b). As noted above, independent claims 1, 7 and 19 have been amended to further point out that the localized volume for which the interior temperature is being controlled is a defined volume that is separate from the volume considered to be the passenger compartment. In claim 7 the localized volume is further recited as "...walls, flooring and cover to define said localized volume and insulation to retard the migration of heat from said passenger compartment..." In claim 19, the method step is recited as "...providing insulated walls, flooring and cover to define said localized volume and retard the migration of heat from said passenger compartment to said localized volume...". One purpose of the invention is to provide a space in which perishables and other items such as groceries may be maintained at temperatures that are most likely cooler than those at which humans would be comfortable.

In contrast, Ito et al shows how one can expand the coverage of a HVAC system used to cool and heat the forward portion of a passenger compartment by providing auxiliary heating and cooling to the rear of the passenger compartment and thereby maintaining a more even distribution of temperatures throughout the passenger compartment. Therefore, in concept the claimed invention is considerably different than Ito et al, as well as in the details. For all these reasons, the rejection should be withdrawn for failing to provide a reference that "anticipates" the claimed invention.

Claim 16 has been rejected under 35 U.S.C. §103(a) as obvious in view of Ito et al alone. Claim 16 is dependent from independent claim 7 and adds a limitation to the claimed apparatus that the air duct is adjacent to the localized volume with openings in one wall and in the floor of the localized volume to remove air from and to direct the flow of air to the localized volume.

The Examiner first alleges that: "Ito et al discloses the claimed invention except for the arrangement of openings to the localized volume."; and further concludes that: "The arrangement of openings from the duct to the volume is considered to be a matter of design choice to one of ordinary skill in the art, as no critically or

unexpected results are seen or disclosed for the claimed arrangement of the openings...”.

As can be seen by reference to the arguments presented above regarding the rejection under 35 USC §102(b), the Examiner's first allegation is wrong. Ito et al does not disclose the claimed invention set forth in independent claim 7 and therefore cannot be used to support a rejection of dependent claim 16 under this statute provision. In addition, if such arrangement of openings were a mere matter of design choice, there should be some greater evidence than a personal allegation and conclusion by the Examiner. Persons skilled in this art, as well as their education levels and expertise are yet to be defined by the Examiner.

Claims 3, 9, 10, 21 and 22 recite the locations of temperature sensors for air entering and leaving the air duct and are read in combination with the claims from which they depend, respectively. The combination of Ito et al with Kochavi et al does not provide the necessary evidence to support a rejection under the statute. Ito et al fails, as indicated in the above-stated arguments, as a base reference because of its failure to disclose a system for controlling a localized volume and also fails to disclose or suggest that sensors should be used to monitor the temperature of air flowing into and out of a localized volume. Kochavi et al discloses a central air conditioning system for use in cooling a plurality of rooms in a building. It also discloses the use of sensors on either side of a pair of heat exchangers. One sensor 57 is located in the entrance to the main duct downstream from the pair of heat exchangers and the other sensor is located in the proximity of and downstream of the blower 40 path prior to the pair of heat exchangers. However, Kochavi et al does not disclose or suggest the use of sensors located to sense air entering and leaving the air duct to the localized volume, as is claimed by Applicant.

Claims 5, 11 and 23 include the use of at least one control valve located between the evaporator core and the condenser to control the flow of refrigerant fluid to the evaporator core and the control device being connected to the control valve to regulate the flow of coolant to the evaporator core. These claim limitations are

read in combination with the claims from which they depend, respectively. The combination of Ito et al with Kusakabe does not provide the necessary evidence to support a rejection under the statute. Ito et al fails, as indicated in the above-stated arguments, as a base reference because of its failure to disclose a system for controlling a localized volume and also fails to disclose or suggest that a control valve should be used to monitor the temperature of air flowing into and out of a localized volume. Kusakabe teaches an air conditioning system in which refrigerator and freezer chambers are controlled from a system that also controls the cooling of the front and rear portions of a passenger compartment of a vehicle. Kusakabe also discloses an expansion valve 31 and a solenoid valve 6. The solenoid valve 6, and not the expansion valve 31, is connected to the control unit circuit 41. There is no reason recited in either patent that would lead one to combine the teachings of the two. Even if the two were combined, the failure of Ito et al to support the contentions of the Examiner make the combination fatal.

Claim 12 recites that the localized volume is located in the storage area of the vehicle and at last one wall is configured to allow access to the localized volume. This claim is read in combination with claim 7 from which it depends. The combination of Ito et al with Newman (cited by Applicant) does not provide the necessary evidence to support a rejection under the statute. Ito et al fails, as indicated in the above-stated arguments, as a base reference because of its failure to disclose a system for controlling a localized volume. Newman shows an insulated food container in the storage compartment of a vehicle and an air conduit extending between an air vent on the dash of the vehicle and the container, and by-passing the passenger compartment. Heated or cooled air from the HVAC system is forced directly into the food container. An auxiliary fan can be mounted within the air conduit to increase the flow of air to the food container. In addition, the container can be accessed by raising the rear deck lid and opening the container door 34. There is no reason recited in either patent that would lead one to combine the teachings of the two. Even if the two were combined, the failure of Ito et al to support the contentions of the Examiner, make the combination fatal.

The four separate rejections of the claims made by the Examiner under 35 USC 103(a) under Ito et al alone or in combination with Ito et al and noted above are improperly made. In each case the Examiner has failed to provide an explanation as required under MPEP Section 706.02(j), subsection (D). It appears as though once the Examiner determined that Ito et al was his preferred reference for supporting a rejection of the claims, he merely looked to see what the deficiencies were in Ito et al with respect to Applicant's claims and then tried to fill them in with the other patents. The Examiner has provided no explanation as to why someone of ordinary skill in the art would be motivated to make the alleged modifications and combinations, absent Applicant's teachings.

MPEP Section 706.02(j) Contents of a 35 U.S.C. 103 Rejection

"... the Examiner should set forth in the Office action:

(A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate,

(B) the difference or differences in the claim over the applied reference(s),

(C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and

(D) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification. (emphasis added)

In each case, the patents cited as references fail to provide the suggestion or motivation for the combination made in the rejection. The same section 706.02(j) of the MPEP cited above continues on to explain how the references should be collected and applied:

"To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on Applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d

1438 (Fed. Cir. 1991). See MPEP § 2143 -§ 2143.03 for decisions pertinent to each of these criteria." (emphasis added)

In these rejections, there is no explanation offered by the Examiner of any alleged general knowledge of one skilled in the art; nor is there any suggestion or motivation in the references themselves. At least one reference has to speak to making the combination.

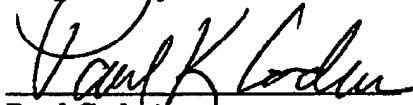
Therefore, it is Applicant's opinion, in view of the MPEP, the cases cited therein, and current patent laws, that the rejections under 35 USC 103 are unsupported and misapplied, and should be withdrawn.

The other patents cited by the Examiner have been reviewed and it is agreed that they were properly not applied as references against the claims of the Application.

No other art is cited in the Office Action. Based on the foregoing comments, the above-identified application is believed to be in condition for allowance, and such allowance is courteously solicited. If any further amendment is necessary to advance prosecution and place this case in allowable condition, the Examiner is courteously requested to contact the undersigned by fax or telephone at the number listed below.

Please charge any cost incurred in the filing of this Amendment, along with any other costs, to Deposit Account 06-1510. If there are insufficient funds in this account, please charge the fees to Deposit Account No.06-1505.

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